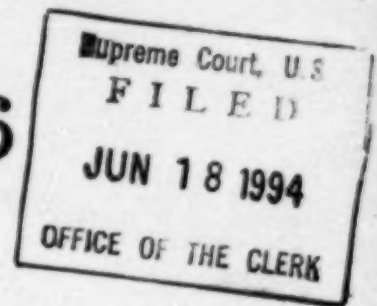


93-986



**IN THE  
SUPREME COURT OF THE UNITED STATES**

**October Term, 1993**

**MARGARET MCINTYRE,**

*Petitioner,*

**v.**

**OHIO ELECTIONS COMMISSION,**

*Respondent.*

---

---

**RESPONDENT OHIO ELECTIONS COMMISSION'S  
MOTION TO DISMISS UPON SUGGESTION OF DEATH  
OF PETITIONER MARGARET MCINTYRE**

---

---

**LEE FISHER**

Attorney General of Ohio

**ANDREW I. SUTTER**

Counsel of Record

Assistant Attorney General -

30 E. Broad Street, 15th Floor

Columbus, Ohio 43215-3428

(614) 466-2872

**Counsel for Respondent, Ohio  
Elections Commission**

**RESPONDENT'S MOTION TO DISMISS  
UPON SUGGESTION OF DEATH OF PETITIONER  
MARGARET MCINTYRE**

This controversy stems from an enforcement proceeding before Respondent Ohio Elections Commission. Respondent determined after a hearing that Petitioner Margaret McIntyre had violated Ohio elections law, Ohio Rev. Code § 3599.09, which requires campaign literature to contain the name and address of the person circulating it and prohibits this attribution statement from being misleading. Respondent thus levied a \$100 fine against Petitioner, which is the penalty provided by statute. Petitioner appealed the imposition of this fine through the Ohio state courts, where it was upheld, and ultimately sought review in this Court, which granted certiorari on February 22, 1994. To this date, the fine has never been collected from Petitioner.

On May 10, 1994, counsel for Respondent learned that Petitioner Margaret McIntyre had died. Pursuant to Supreme Court Rule 35.1:

In the event a party dies after filing a . . . petition for a writ of certiorari, the authorized representative of the deceased party may appear and, upon motion, be substituted as a party to the proceeding. If the representative does not voluntarily become a party, any other party may suggest the death on the record and on motion seek an order requiring the representative to become a party within a designated time. If the representative then fails to become a party, the party so moving, if a respondent . . . , shall be entitled to have the petition for a writ of certiorari . . . dismissed or the judgment vacated for mootness, as may be appropriate.



After learning of Petitioner's death, counsel for Respondent immediately contacted the members of the Ohio Elections Commission and inquired whether they would seek to pursue this case, and the collection of the fine imposed on Petitioner, any further. In light of the fact that the only matter at issue in this case was the legality of Petitioner's conduct and the propriety of the fine imposed for what were adjudged to be violations of Ohio law, the Commission members concluded that to pursue collection from Ms. McIntyre's estate would be certainly inappropriate and perhaps even improper. They thus instructed counsel for Respondent to inform this Court that no further attempts would be made either to pursue this case or to collect the fine imposed.

In light of the Commission's position, it appears that rather than permitting a representative to be substituted for Petitioner in this case, this action has become moot and should be dismissed. See, e.g., *American Tobacco Co. v. United States*, 328 U.S. 781, 815 n.11 (1946) (petition of certiorari dismissed upon death of petitioner who was seeking relief from fine imposed for violation of the Sherman Act). This appears to be the Court's standard practice in cases involving punishments imposed for alleged violations of law upon the death of the individual. See, e.g., *United States v. Green*, \_\_\_ U.S. \_\_\_, 113 S. Ct. 1835 (1993) (certiorari dismissed); *Mintzes v. Buchanan*, 471 U.S. 154 (1985) (same); *Hampton v. Ditty*, 414 U.S. 885 (1973) (same). By contrast, the Court permits substitution and continues a pending case where the deceased party was seeking compensatory damages and any such right or obligation would survive the party's death. See, e.g., *Farmer v. Carpenters*, 430 U.S. 290 (1977). Such is not the case here.

In addition, this case cannot properly be considered to fall within the exception to mootness for situations that are "capable of repetition, yet evading review." This is not a situation where there exists "a reasonable expectation that the same complaining party would be subjected to the same action again." *Weinstein v.*

*Bradford*, 423 U.S. 147, 149 (1974). Nor is it a potentially recurring situation where the temporary nature of facts essential to the controversy would consistently defeat review, as in election or abortion cases. See, e.g., *Democratic Party v. Wisconsin*, 450 U.S. 107, 115 n.13 (1981); *Roe v. Wade*, 410 U.S. 113, 125 (1973). In this case, the matter arose from the fine imposed upon Petitioner by Respondent for her alleged violation of Ohio law, and that controversy has now abated with her death.

As this case has come to this Court from the state courts, the proper disposition here would be to dismiss the petition for a writ of certiorari and leave it to the state courts either to declare the matter abated or to take whatever other action they deem proper according to the applicable jurisdictional principles under state law. See, e.g., *Hampton, supra* (certiorari dismissed); *Pennsylvania v. Linde*, 409 U.S. 1031 (1972) (same); *Miller v. Ohio*, 404 U.S. 1011 (1972) (same).<sup>1</sup>

<sup>1</sup> As an alternative disposition, Respondent would suggest that the Court could simply dismiss the writ as improvidently granted, as it has done in other recent cases in which the Court determined that its resolution of constitutional questions may be entirely hypothetical. See, e.g., *Ticor Title Ins. Co. v. Brown*, \_\_\_ U.S. \_\_\_, 114 S. Ct. 1359 (1994). It is unclear, however, that this disposition differs in any pertinent respect from a bare dismissal of certiorari, as the Court has done in other cases similar to this one upon the death of the individual party.

Consequently, Respondent urges this Court to dismiss the petition for a writ of certiorari in this case.

Respectfully submitted,

**LEE FISHER**  
Attorney General

**ANDREW I. SUTTER**  
Counsel of Record  
Assistant Attorney General  
30 East Broad Street, 15th Floor  
Columbus, Ohio 43215-3428  
(614) 466-2872

**Counsel for Respondent, Ohio  
Elections Commission**

June 24, 1994